

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

RFA No.305 of 2006.
Date of decision: 10.12.2007

State of H.P. & Ors. **...Appellants**

Versus

Sh.Bishan Singh & Ors. **...Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹

For the Appellants: **Mr.Rajan Dewan, Additional
Advocate General.**

**For Respondents No.5, : Mr.Dalip K.Sharma, Advocate.
9 to 12, 14 to 16 and
18.**

Dev Darshan Sud,J.

When this appeal was taken up for consideration of two applications moved by the appellants, namely for bringing on record the legal representatives of respondent No.8, Smt.Sarju wife of Lachhi Ram and legal representatives of respondent No.13, Ram Rattan, it was pointed out by the learned Additional Advocate General that Smt.Sarju had died on 9.2.1991 and Shri Ram Rattan had died on 16.5.2005. According to him, the Reference Petition should have abated. He submits that in the case of Smt.Sarju, it is not clear as to how the petition was

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

entertained on her behalf as one of the reference petitioners, since on the date when the petition was instituted, she had already died.

In **CMP (M) No.587 of 2005**, titled as **Collector, Land Acquisition Vs. Khewa Ram and Others**, **decided on 9.1.2007**, this Court has held that where there are more than one claimants, the death of one will not result in the abatement of the appeal. Obviously, it was the duty of the claimants to have taken appropriate steps before the Reference Court which has not been done.

Admittedly, prima facie the death certificate filed on the record shows that Smt.Sarju had died long time before the reference petition was taken cognizance of by the learned Reference Court. In the circumstances, it is not clear as to how she was represented in the pending proceedings before the District Judge who has seized of the matter.

In the facts and circumstances of the case, the matter is remanded to the District Judge, Solan, who will consider:-

- (a) as to whether the death of Smt.Sarju before the reference petition had been instituted would make any difference to the maintainability of the Reference Petition;
- (b) whether the death of any other claimant during the pendency of the

Reference Petition would make any difference to that of the Reference Petition and whether the Reference petition would abate as a whole or in part;

- (c) For this purpose, he will follow the decision of this Court in ***CMP (M) No.587 of 2005***, titled as ***Collector, Land Acquisition Vs. Khewa Ram and Others, decided on 9.1.2007***.

This appeal is accordingly remanded with the directions hereinbefore. Let records be sent back to the Court of the District Judge, Solan, immediately.

Parties to appear before the Court of District Judge on ***3rd January, 2008***. All pending applications are disposed of. There shall be no order as to costs.

December 10, 2007
(aks)

(Dev Darshan Sud)
Judge.